



# California Fair Political Practices Commission

November 15, 1985

Lance H. Olson  
Olson, Connelly & Hagel  
431 J Street, Fourth Floor  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-85-218

Dear Mr. Olson:

Thank you for your letter requesting advice on behalf of Sacramento County Supervisor Ted Sheedy regarding his duties under the Political Reform Act.<sup>1/</sup>

## FACTS

In your letter you provided the following facts:

A local land development company, Daru Development, has offered to provide to my client an aerial inspection of certain land within Sacramento County and owned by the company. The inspection would involve a helicopter flight in a helicopter owned by the company. The helicopter would depart and return to the same site. The company proposes that one of its representatives go along on the flight to explain various issues involving the property and to answer questions. While airborne, my client could inspect other contiguous sites (not owned by the company) that involve similar land use issues.

The land to be inspected involves some 20 acres to be considered for rezoning to increase the residential density of the area. Thus, the future land use of the property in question, as well as contiguous parcels, is generally of keen interest to my client.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

The aerial inspection of the properties would provide a unique opportunity for my client to evaluate potential land uses. Such an opportunity would not necessarily be provided by a walking or driving tour of the area. Especially valuable would be the ability to view the approximately 20 acres at issue in relation to traffic circulation patterns which would service the land. The official could also gain an important visual orientation as to how the land development would fit into the community. Further, he could determine how it would fit into the overall area with regard to commercial and industrial properties.

#### QUESTION

If Supervisor Sheedy accepts a helicopter tour of these properties, must he report the helicopter tour as a gift on his Statement of Economic Interests?

#### CONCLUSION

If Supervisor Sheedy accepts a helicopter tour of these properties, he must report the helicopter tour as a gift on his Statement of Economic Interests.

#### ANALYSIS

Section 87207 requires any member of the board of supervisors to disclose each source of gifts of fifty dollars (\$50) or more on his Statement of Economic Interests. Section 82028 defines a "gift" as any payment to the extent that consideration of equal or greater value is not received. However, the term "gift" does not include, among other things, informational material such as books, reports, pamphlets, calendars or periodicals. However, certain types of payments are excluded from the definition of "gift." Specifically, Section 82028(b)(1) provides:

(b) The term "gift" does not include:

(1) Informational material such as books, reports, pamphlets, calendars or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material"....

In the Opinion requested by John Stephen Spellman, 1 FPPC Opinions 16 (No. 75-026, May 1, 1975), the Commission considered whether a tour of a nuclear power plant was a reportable gift or whether it came within the exception for

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"informational material." The tour of the nuclear power plant was not available to the public generally, but was arranged especially to provide information to state government through Mr. Spellman, a legislative official. The Commission was asked to assume that the tour was arranged at Mr. Spellman's request and that it would not be provided for anyone other than a government official. The Commission concluded that, under the circumstances of that particular situation, the exception for "informational material" applied to the tour of the nuclear power plant.

More recently, we advised a public official that payment for his transportation to an oil drilling platform was a necessary part of a tour of the oil platform, and therefore would not be considered a reportable gift. Advice letter to Gordon Duffy, A-85-084.

You have stated that a helicopter tour of certain properties proposed for development would provide Supervisor Sheedy with a unique way to evaluate future uses of those properties, and that the helicopter trip is a necessary element of the tour. Therefore, you have expressed your opinion that the helicopter tour should come within the "informational material" exception of Section 82028(b)(1), in which case Supervisor Sheedy would have no obligation to report the helicopter tour as a gift.

We do not agree with your interpretation of Section 82028(b)(1). In two important respects, the helicopter tour offered to Supervisor Sheedy is unlike the tour of the nuclear power plant in the Spellman Opinion or the transportation to and tour of the oil drilling platform in the Duffy letter. First, in the Spellman Opinion and the Duffy letter, the tour was of a privately-owned facility to which public access is restricted. In your letter, it does not appear that there is restricted public access to the properties under consideration for increased residential density. Secondly, in the Duffy letter, the transportation to the oil drilling platform provided by Chevron was the only means of transportation to the tour site. You have indicated that the properties which Supervisor Sheedy would tour are accessible by car or by foot. Furthermore, there are at least three commercial helicopter flight services in Sacramento which could provide the same opportunity for Supervisor Sheedy to obtain an aerial view of the properties in question. Therefore, we conclude that the helicopter tour provided by Daru Development is merely an advantageous way of providing a public official with an

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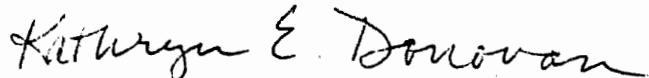
opportunity to view the site, but is not the unique or only way he could obtain the information.

The general rule is that public officials must report gifts of \$50 or more. Exceptions to this general rule must be narrowly construed. See Estate of Banerjee (1978), 21 Cal. 3d 527, 540. Therefore, in our opinion, the "informational materials" exception should not be extended to the helicopter tour offered to Supervisor Sheedy.

Accordingly, if Supervisor Sheedy accepts the offer of the helicopter tour, and the cost of that tour exceeds \$50, he must report the tour as a gift from Daru Development. As you know, if the value of the tour is \$250 or more, Supervisor Sheedy would be required to disqualify himself from decisions of the Board of Supervisors which would have a reasonably foreseeable material financial effect on Daru Development.

If you have any further questions concerning this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan  
Counsel  
Legal Division

KED:plh

BRUCE J. HAGEL  
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October 23, 1985

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Sacramento, CA 95814

Re: Request for Advice

Dear Ms. Donovan:

This office represents Sacramento County Supervisor Ted Sheedy, who has requested of me an opinion as to whether a proposed transaction would be reportable as a gift on his Statement of Economic Interest. I am in turn seeking advice from your office. I have set forth below the relevant facts as well as provided my own analysis of applicable law and opinions.

A local land development company, Daru Development, has offered to provide to my client an aerial inspection of certain land within Sacramento County and owned by the company. The inspection would involve a helicopter flight in a helicopter owned by the company. The helicopter would depart and return to the same site. The company proposes that one of its representatives go along on the flight to explain various issues involving the property and to answer questions. While airborne, my client could inspect other contiguous sites (not owned by the company) that involve similar land use issues.

The land to be inspected involves some 20 acres to be considered for rezoning to increase the residential density of the area. Thus, the future land use of the property in question, as well as contiguous parcels, is generally of keen interest to my client.

The aerial inspection of the properties would provide a unique opportunity for my client to evaluate potential land uses. Such an opportunity would not necessarily be provided by a walking or driving tour of the area. Especially valuable would be the ability to view the approximately 20 acres at issue in relation to traffic circulation patterns which would service the land. The official could also gain

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an important visual orientation as to how the land development would fit into the community. Further, he could determine how it would fit into the overall area with regard to commercial and industrial properties.

In reviewing Government Code Section 82028(b)(1), I note an exception to the general definition of "gifts" to include "informational material such as books, reports, pamphlets, calendars or periodicals." While the section contains no specific reference to intangible informational material, your commission has concluded in the past that certain "tours" given to public officials are informational materials. Opinion requested by John Stephen Spellman, 1 FPFC Opinions 16.

While the statute creating the exception to "gifts:", specifically excludes travel, you have opined in the past that travel associated with the tour itself does not necessarily fall within this exception to the exception. Advice to Gordon Duffy, A-84-084.

In the Duffy opinion you note that "it is reasonable to conclude that travel expenses are part of the tour if the travel is necessary to the tour and it is the only means of transportation to the tour site."

Here we have a situation where a public official could accept a tour of certain properties in which he would have a future say as to how those areas might be developed. A unique way to evaluate future uses, which could not be obtained any other way, involves the use of a helicopter. Clearly the helicopter trip is an essential element of the tour.

In my opinion, the use of the helicopter is necessary to the tour and certainly the only means available to obtain such a unique inspection.

I might add that a strong argument can be made that use of a helicopter does not constitute "transportation" within the meaning of Section 82028(b)(1). A common sense meaning of that word suggests traveling from one destination to

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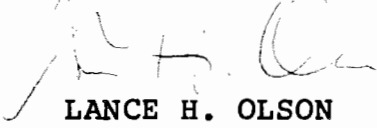
another. Here the helicopter would depart and return to the same location. No unrelated trips would be taken.

In the Spellman opinion the Commission concluded the "tour" was informational material. If Mr. Spellman had ridden on a bus at PG & E's expense while touring the nuclear power plant, would it have reached a different conclusion? I think not. I see no distinction between the two cases.

I would appreciate your opinion at your earliest convenience.

Very truly yours,

OLSON, CONNELLY & HAGEL

  
LANCE H. OLSON

LHO/fr